



Jun 24 2009
4:22PM

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June 24, 2009

By E-Mail and Hand

Hon. Shira A. Scheindlin
United States District Judge
Southern District of New York
500 Pearl Street, Room 1620
New York, New York 10007

Re: *In re Methyl Tertiary Butyl Ether (MTBE) Products Liability Litigation*,
MDL No. 1358, Master File No. 1:00-1898 (SAS)
City of New York v. Amerada Hess, et al., 04 CV 3417 (SDNY)

Dear Judge Scheindlin:

I write in response to Peter Sacripanti's June 23, 2009 letter concerning the City of New York's identification of Douglas Greeley, Kathryn Garcia and Angela Licata as possible witnesses in Phase I of the trial and the City's production of certain budget documents to ExxonMobil.

I. The City's Witness List

Contrary to the assertions in Mr. Sacripanti's letter, ExxonMobil had more than sufficient knowledge of the City's witnesses and for its own reasons, chose either not to depose them or not to seek further discovery on the subject matter of their possible testimony before now. ExxonMobil is simply seeking to blame the City on the eve of trial for discovery decisions made by defendants during the last five years. The City appropriately responded to defendants' discovery requests and appropriately designated each of these potential witnesses. In this regard, ExxonMobil's assertion that the City failed to live up to its obligations under Rule 26(e) is wrong. Rule 26(e) requires supplementation of disclosure if the additional information "has not otherwise been made known to the other parties during the discovery process ..." Not only has ExxonMobil not identified any inadequate disclosure but, as detailed below, the information it complains about was made known to it during discovery.

As an initial matter, the City notes that both Mr. Greeley and Ms. Licata were listed on the City's draft witness list provided to defendants on April 13, 2009, more than two months ago. If ExxonMobil had issues with the City's identification of potential witnesses, it should have raised them then, rather waiting until less than a month before trial.

Douglas Greeley

Far from being "sandbagged," ExxonMobil had full notice of Mr. Greeley and his role with respect to the City's groundwater system as early as 2005. On March 1, 2005, Mr. Greeley verified one of the City's first discovery responses in this action. More than 3 1/2 years ago, at one of the first depositions of a City witness in this litigation (taken by ExxonMobil's counsel), Mr. Greeley was identified as the then-Deputy Commissioner of the City Department of Environmental Protection's Bureau of Water and Sewer Operations, the Bureau that operates the City's groundwater system. Deposition of John Dydland, dated October 20, 2005, at 104:23-105:6;¹ see also Deposition of Thomas Tengelsen, dated October 11, 2005, at 376:3-376:5. In depositions of DEP witnesses in 2005 and early 2006 (again, all taken by ExxonMobil's counsel), Mr. Greeley was repeatedly identified as one of the senior DEP decision-makers on groundwater issues, including budget, water quality, and removal of wells from service. See Deposition of Arthur Ashendorff, dated October 18, 2005, at 46:1-11:19; Deposition of William Yulinsky, dated October 25, 2005, at 169:15-171:21; Deposition of William Yulinsky, dated January 30, 2006 ("2006 Yulinsky Dep."), at 469:11-470:13.

The City's witnesses were equally clear about Mr. Greeley's involvement with Station 6. In 2006, Mr. Yulinsky testified that Mr. Greeley assured the community at a November 27, 2001 public information meeting in Jamaica, Queens concerning the status of Station 6, that the City would provide water from the groundwater system that equaled or exceeded the upstate surface water system in quality. 2006 Yulinsky Dep., at 483:1-492:8. More recently, Donald Cohen testified that the City's preliminary design consultant for Station 6, Malcolm Pirnie Inc., discussed proceeding with the treatment facility at Station 6 with Mr. Greeley, and delivered the conceptual design for the Station 6 facility to Mr. Greeley, both times in his position as Deputy Commissioner for Water and Sewer Operations. Deposition of Donald Cohen, dated January 13, 2009, at 28:22-31:21, 169:17-171:22, 237:18-240:5. These are just a few examples from depositions of City witnesses; the City could cite to other deposition testimony and numerous documents provided to defendants over the past five years highlighting Mr. Greeley's involvement in groundwater issues. In light of this, ExxonMobil's protestations of ignorance ring hollow.

The Interrogatory and the City's August 2008 Response that ExxonMobil cites in its letter is not inconsistent with the deposition testimony and documents. Defendants' Interrogatory asked for the *current* status of plans and budget for Station 6. The City's answer is clear that it is identifying persons most knowledgeable about that *current* status. By August 2008, when the City answered the interrogatory (and indeed, well before then), Mr. Greeley was

¹ The cited deposition excerpts are attached as Exhibit A.

no longer Deputy Commissioner for Water and Sewer Operations and no longer had responsibility for the City's groundwater system. Consequently, he was not a person most knowledgeable about the then-current status of any aspect of the groundwater system and was appropriately not identified.

Angela Licata

Ms. Licata will not be testifying specifically about Station 6. Rather, as the Deputy Commissioner of DEP's Bureau of Environmental Planning and Assessment, she is prepared to testify, if needed, about City processes applicable to major water and sewer capital construction projects. Ms. Licata's Bureau was identified generally in August 2008, in the City's Response to Interrogatory No. 22 to Defendants' Second Set of Interrogatories.² That Interrogatory asked about preparation of a draft environmental impact statement for uses of the Brooklyn-Queens Aquifer. In its August 2008 response, the City stated that "any environmental review for these planned projects [possible uses of the Brooklyn-Queens Aquifer, including Station 6] would be primarily overseen by staff within DEP's Bureau of Environmental Planning and Assessment ("BEPA")." Perhaps indicating defendants' lack of real interest about this and other City process issues, defendants did not follow up this response by seeking to depose anyone from BEPA and did not seek further discovery on this issue.

Again the City's identification of Ms. Licata is not inconsistent with the City's earlier Interrogatory Response cited by ExxonMobil, as Ms. Licata will not testify about the status of plans and budget for Station 6.

Kathryn Garcia

Ms. Garcia will also not be testifying directly about Station 6. As the current DEP Assistant Commissioner for Strategic Projects, Ms. Garcia is involved with the Dependability Study currently underway at DEP, including the 55 million gallon/day groundwater project and facility planning for a possible parallel tunnel to bypass the leaks in the Rondout-West Branch Tunnel portion of the Delaware Aqueduct. We do not think the Dependability Study and the possible parallel tunnel are relevant to the question posed by the Court for Phase I of the trial,³ and would not have listed Ms. Garcia in connection with that question. She is not directly involved with the day to day planning or oversight of Station 6, is not responsible for the Bureau of Engineering Design and Construction's ("BEDC") budget, which includes Station 6, and was appropriately not identified as a person most knowledgeable about either. But because ExxonMobil, despite the totality of evidence to the contrary, insists

² A copy of the City's Response is attached as Exhibit B.

³ The Phase I question is whether assuming the money is available, the City has proven by a preponderance of the credible evidence that Station 6 will be constructed within 15 years. Transcript of June 2, 2009 Court Conference, at 66-74. (A copy of the relevant pages are attached as Exhibit C).

that Station 6 is part of the Dependability Study and has repeatedly stated its intent to explore the City's consideration of a possible parallel tunnel, the City listed Ms. Garcia as a possible witness.⁴

ExxonMobil has had ample notice of Ms. Garcia's role with respect to the Dependability Study. Both representatives of the two firms that comprise the Dependability Joint Venture testified that the DEP decision-makers with respect to the Dependability Study include Kathryn Garcia. Deposition of Richard Peters, dated January 9, 2009, at 450:13-451:8; Deposition of Mark Maimone, dated January 16, 2009, 89:1-89:20. William Meakin, the former senior project manager for Dependability, and the City's Rule 30(b)(6) witness on Dependability, mentioned Ms. Garcia more than 30 times in his deposition (again, a deposition taken by ExxonMobil's counsel), identifying her as a decision-maker, as someone with whom he spoke to prepare for his deposition, and as a liaison with the DEP Commissioner and the Deputy Mayor on Dependability issues. Deposition of William Meakin, dated April 22, 2009, at 109:9-111:11, 164:19-167:19; Deposition of William Meakin, dated April 23, 2009, at 208:2-208:20, 212:18-213:5, 240:19-241:8. Indeed, ExxonMobil's counsel repeatedly asked Mr. Meakin about Ms. Garcia. *See, e.g.*, Deposition of William Meakin, dated April 23, 2009, at 207:13-208:11, 212:5-213:1, 218:14-218:19, 234:24-235:3. And ExxonMobil is obviously knowledgeable about Ms. Garcia; its Phase I trial memorandum repeatedly refers to Ms. Garcia and cites to documents authored by Ms. Garcia that, ExxonMobil incorrectly argues, purportedly establish the City's intent to proceed with the parallel tunnel in lieu of Station 6. Given that ExxonMobil has chosen to raise unrelated Dependability Study issues during phase I of the trial, it cannot complain when the City identifies a witness who can address those issues.

Again, the City's identification of Ms. Garcia is not inconsistent with the City's earlier Interrogatory Response cited by ExxonMobil, as Ms. Garcia will not testify about the status of plans and budget for Station 6.

II. The Budget Documents

The City listed and provided ExxonMobil with 7 two-page excerpts from publicly available budget documents containing, in an easy to read format, a summary of the Mayor's proposed and the City's adopted capital budget commitments for Station 6 for fiscal years 2007 through 2009 and the Mayor's proposed capital budget commitment for Station 6 for fiscal year 2010. With the exception of the fiscal year 2010 document, the City had already produced to

⁴ ExxonMobil questions why the City did not list William Meakin, the City's Rule 30(b)(6) witness on the Dependability Study, rather than Ms. Garcia. While Mr. Meakin was the DEP employee directly responsible for managing the Dependability Study, as he explained in his deposition, his job responsibilities have recently changed. Deposition of William Meakin, dated April 22, 2009, at 11-12. Notably, ExxonMobil did not seek any additional depositions upon learning this.

defendants all of the information contained in these exhibits.⁵ The fiscal year 2010 document was released only in May 2009. Further, the complete City capital budgets from which these Station 6 entries are excerpted are, and have long been, publicly available on the web site of the City's Office of Management and Budget, the City agency responsible for the City budget.

ExxonMobil took a Rule 30(b)(6) deposition of the City on Station 6 and the City budget in April 2009. It did not complain at the time that that deposition was inadequate and did not seek to depose a second witness on the City's budget.⁶ Having waited three months, it should not be allowed another deposition on the same topic now.

Conclusion

ExxonMobil has had almost five years to take discovery of the City and depose City witnesses. It should not now be allowed to complain about the City's designation as potential witnesses of three employees whom ExxonMobil knew about and, for whatever reason, decided not to depose during those five years. Further, requiring the City less than a month before trial to make available, prepare, and defend four witnesses at depositions that ExxonMobil could have taken long ago would prejudice the City for strategic discovery decisions made by ExxonMobil. ExxonMobil's last-minute attempts to divert the Court and burden the City with belated discovery issues should be rejected.

Respectfully yours,



Susan E. Amron
Deputy Chief
Environmental Law Division

c: Peter Sacripanti
Victor Sher

⁵ Documents with the same budget information include NYC-DS-067598_YTD Registrations 12.27.06_to Bureaus.xls; NYC-DS-067508_YTD Registrations 12.27.06_to Bureaus.xls; NYC-DS-067676_2008 Sept Plan Exercise_To_Bureaus.xls; NYC-DS-067395_Budget Tracking 070908.xls; NYC-DS-067719_Year Plan 08-12(2008CPJP)_FINAL_to-Bureau.xls; NYC-DS-067737_Sept_Plan_FY-09_by_DIVISION_DRAD.xls; NYC-DS-029570_Budget Tracking 050908.xls; Meakin Exhibits 41-43.

⁶ Joseph Murin, from whom the City submitted an affidavit to oppose ExxonMobil's recent motion to require production of documents withheld under the deliberative process privilege, is an employee of the City Department of Environmental Protection and not the separate City budget agency, the Office of Management and Budget.



Jun 24 2009
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EXHIBIT A

CONFIDENTIAL (PER 2004 MDL 1358 ORDER)

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 - - -
4 IN RE : MDL No. 1358 (SAS)
5 :
6 Methyl Tertiary :
7 Butyl Ether :
8 ("MTBE") :
9 Products :
10 Liability :
11 Litigation :

12 CONFIDENTIAL (Per 2004 MDL 1358 Order)
13 - - -

14 October 18, 2005

15 - - -
16 Videotape deposition of ARTHUR J.
17 ASHENDORFF, held in the offices of
18 McDermott Will & Emery, 50 Rockefeller
19 Plaza, New York, New York 10020,
20 commencing at 10:21 a.m., on the above
21 date, before Linda L. Golkow, a
22 Federally-Approved Registered Diplomate
23 Reporter and Certified Shorthand
24 Reporter.

25 - - -
26 ESQUIRE DEPOSITION SERVICES
27 Four Penn Center
28 1600 John F. Kennedy Boulevard
29 Suite 1210
30 Philadelphia, Pennsylvania 19103
31 (215) 988-9191

ESQUIRE DEPOSITION SERVICES

1 Q. Who was that point of
2 contact for you folks in operations?

3 A. It was Doug Greeley's group,
4 and it probably was -- it was Doug
5 Greeley's people.

6 Q. Do you recall any instances
7 where you conferred with Mr. Dydland
8 concerning shutdown of the wells?

9 A. I think Dydland was one of
10 the people.

11 Q. Other than Mr. John Dydland,
12 is there anyone else who you can identify
13 that was in the operations group that you
14 would consult with relative to shutting
15 down a well or starting up a well for
16 water quality problems?

17 A. There may have been other
18 names, but I recall Greeley, Dydland,
19 mainly.

20 Q. In the course of your work
21 with the city, did you ever have any
22 occasion to work with Mr. Odd Larsen?

23 A. On rare occasions.

4 Q. With regard to Mr. Larsen's

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1 IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

2

3 IN RE:

4 Methyl Tertiary :MDL NO. 1358 (SAS)
Butyl Ether ("MTBE");
5 Products Liability :
Litigation :
6

7 CONFIDENTIAL (Per 2004 MDL 1358 Order)

8

October 20, 2005

9

10

CONFIDENTIAL Videotaped
11 Deposition of JOHN E. DYDLAND, held in
the law offices of McDermott, Will &
12 Emery, 50 Rockefeller Plaza, New York,
New York 10020, beginning at
13 approximately 10:13 a.m., before Ann V.
Kaufmann, a Registered Professional
14 Reporter, Certified Realtime Reporter,
Approved Reporter of the U.S. District
15 Court, and a Notary Public of the
Commonwealth of Pennsylvania.
16

17

18

19

20

21

22 ESQUIRE DEPOSITION SERVICES
1600 John F. Kennedy Boulevard
23 Four Penn Center, Suite 1210
Philadelphia, Pennsylvania 19103
24 (215) 988-9191

00104

1 York City 12053 through New York City
2 17192. And I will note that the pages
3 which are charts are not sequentially
4 numbered with respect to the other
5 documents.

6 The tables of organizations
7 run from NYC-0017150 through the last
8 page, which is 192. And I flagged in
9 red the chart. And the two purple
10 charts, I believe, are the table of
11 organization.

12 Dan, those pages, so you
13 will know, the table of organization
14 where Mr. Dydland's name appears, are
15 Page 158 and 163.

16 (Above-described document
17 marked as Dydland Exhibit 5.)

18 BY MR. STACK:

19 Q. Have you had an opportunity
20 to review the table of organization
21 pages that were flagged?

22 A. Yes.

23 Q. And the first page is a
24 page Bates numbered 17158. It says:

00105

1 "Bureau of Water and Sewer Operations,

2 Director for Distribution Operations."

3 It indicates that the deputy

4 commissioner is Mr. Greeley; am I

5 correct?

6 A. That is correct.

7 Q. And you are indicated as

8 being in the Distribution Operations,

9 the chief of Groundwater Supply?

10 A. That is correct.

11 Q. With regard to your

12 reporting, do you report to Mr. Coleman?

13 A. That is correct.

14 Q. And what is Mr. Coleman's

15 position?

16 A. Director for Distribution

17 Operations.

18 Q. With respect to the two

19 groups -- there is a group supervised by

20 yourself, sir, and then by Mr. Larsen --

21 how are those two groups distinguished?

22 A. The group that I supervise

23 is the Groundwater Division. The group

24 that Mr. Larsen supervises is the

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1 IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

2

3 IN RE:

4 Methyl Tertiary Butyl:MDL NO. 1358 (SAS)
Ether ("MTBE") :
5 Products Liability :
Litigation :
6

7 In Re:

8 City of New York

9

CONFIDENTIAL (Per 2004 MDL 1358 Order)

10

11

January 13, 2009

12

13

14

15 Videotaped Deposition of
DONALD K. COHEN, CPG, 30(b)(6) witness
16 for the City of New York, held in the law
offices of McDermott, Will & Emery, 340
17 Madison Avenue, New York, New York 10173,
beginning at approximately 10:22 a.m.,
18 before Ann V. Kaufmann, a Registered
Professional Reporter, Certified Realtime
19 Reporter, Approved Reporter of the U.S.
District Court, and a Notary Public.

20

21

22

GOLKOW TECHNOLOGIES, INC.
23 877.370.3377 ph|917.591.5672 fax
deps@golkow.com
24

00169

1 A. That's true.

2 Q. Has that issue been
3 resolved?

4 A. Yes, it has.

5 Q. And it was resolved by the
6 streets being demapped, I believe they
7 call it?

8 A. No, that is not the way it
9 was taken care of.

10 Q. How was it taken care of?

11 A. It was taken care of
12 through the BSA, Board of Standards and
13 Appeals. We were able to get an
14 exemption to that. The City has,
15 however, reserved the right to formally
16 demap those streets in the future.

17 Q. Once it was recommended by
18 Malcolm Pirnie to build a Station 6
19 facility in the 1998 BQA study, did you
20 have any discussions with the City as to
21 whether that project should go forward?

22 A. Yes.

23 Q. With whom did you have
24 those discussions?

00170

1 A. At that time it was
2 primarily William Yulinsky and Doug
3 Greeley, both at the time with BWSO.

4 Q. And that's the Bureau of
5 Water Supply Operations?

6 A. Bureau of Water and Sewer
7 Operations.

8 Q. And has that department now
9 been reorganized?

10 A. I'm not sure I could answer
11 that. I mean, there are new people
12 there, but personnel changes. I don't
13 know about a reorganization.

14 Q. What discussions did you
15 have with Mr. Yulinsky and Mr. Greeley
16 about the Station 6 project going
17 forward?

18 MR. SHER: Can you give a
19 time frame?

20 MR. CONDRON: Yes. After
21 the BQA study came out, he indicated
22 that he had some discussions with them
23 as to whether or not the project should
24 go forward.

00171

1 THE WITNESS: We talked
2 about the feasibility of it, the scope
3 that might be included in that, the
4 approach to it, the value of that
5 project, potential costs, an overall
6 approach to how it might be implemented.

7 Q. With respect to potential
8 costs, what do you recall discussing
9 with Mr. Yulinsky and Mr. Greeley during
10 this time frame?

11 A. At that time it was
12 extremely rough estimates because we
13 hadn't even done a conceptual plan at
14 that point. It was more of just using
15 published information to say, you know,
16 facilities of a certain size have, you
17 know, rough costs associated with them.
18 It wasn't even a level 6 type cost
19 estimate at that point. It was to get a
20 ballpark idea of how much money would
21 need to be allowed or accounted for in
22 the capital budget for the future.

23 Q. How much money did you
24 indicate would be necessary to be

00028

1 THE WITNESS: As far as I am
2 aware sitting here today, that's
3 correct.

4 MR. SHER: And, Pete, again,
5 I don't want to interrupt your
6 questioning here, but with respect to
7 this, I do not contest that it is
8 appropriate for you to inquire of
9 Mr. Cohen at the appropriate time into
10 those topics.

11 MR. CONDRON: Okay.

12 MR. SHER: I'm just not
13 going to allow him to testify with
14 respect to the matters that I mentioned
15 today, and the reason is the ongoing --
16 his ongoing work as an expert. We can
17 get to that when we get to specific
18 questions.

19 MR. CONDRON: We may need to
20 do that.

21 BY MR. CONDRON:

22 Q. In addition, Mr. Cohen, it
23 is the case that Malcolm Pirnie has made
24 a number of submissions and

00029

1 recommendations to the City regarding
2 proposed treatment for the wells at
3 Station 6; correct?

4 A. We have prepared reports
5 that --

6 MR. SHER: It calls for a
7 yes or no answer, Don.

8 THE WITNESS: Yes, we have.

9 BY MR. CONDRON:

10 Q. And you have prepared
11 reports that you have provided to the
12 City in connection with that work;
13 correct?

14 A. Yes.

15 Q. And that work was done in
16 your capacity as a consultant to the
17 City of New York; correct?

18 A. Yes.

19 Q. It was not done as an
20 expert witness; correct?

21 A. That's correct.

22 Q. And those reports were
23 provided to whom at the City -- to who
24 at the City of New York?

00030

1 MR. SHER: Objection and
2 instruct not to answer to the extent
3 that you are calling for attorney-client
4 communications.

5 You can answer other than to
6 attorneys, if you can.

7 THE WITNESS: In general,
8 our reports were submitted to the New
9 York City DEP, Department of
10 Environmental Protection.

11 BY MR. CONDRON:

12 Q. Were they submitted to any
13 particular individual at the DEP?

14 MR. SHER: Objection,
15 compound.

16 Are you able to answer with
17 respect to all of the documents that you
18 have in mind?

19 THE WITNESS: Our
20 contractual arrangements with the DEP
21 are with the Bureau of Water and Sewer
22 Operations. There are a number of
23 individuals within that bureau to whom
24 those documents would be submitted.

00031

1 BY MR. CONDRON:

2 Q. Okay. Can you identify

3 those individuals for me?

4 A. William Yulinsky was the --

5 an original project manager for this

6 project. Douglas Greeley. More

7 currently, Thomas Tipa.

8 Q. I'm sorry. Could you spell

9 that, please?

10 A. T-I-P-A.

11 Q. And what is Mr. Tipa's role

12 at DEP?

13 MR. SHER: If you know.

14 A. I'm not sure I recall his

15 exact title, but he is involved in

16 development, current development of the

17 New York City groundwater system.

18 Q. And Mr. Greeley was an

19 assistant commissioner; is that correct?

20 A. Deputy Commissioner for the

21 Bureau of Water and Sewer Operations.

22 Q. Is he with the City

23 currently?

24 A. Yes.

00237

1 answer to the extent that the question
2 is calling for inquiry into 2007 and
3 more recently, but you can answer.

4 THE WITNESS: Effectiveness
5 is always the first criteria. We have
6 to produce water that meets MCLs as
7 protective of human health. That does
8 not change.

9 MR. SHER: Should we keep
10 Exhibit 13 available or are you moving
11 on?

12 MR. CONDRON: I'm going to
13 move on for now. You can probably put
14 that to the side.

15 (Below-described document
16 marked as Cohen Exhibit 15.)

17 BY MR. CONDRON:

18 Q. Mr. Cohen, the court
19 reporter is handing you what has been
20 marked as Cohen Exhibit 15. For the
21 record, it does not have a Bates -- oh
22 yes, it does have a Bates number. I
23 take that back, although the cover,
24 apparently, does not. The Bates number

00238

1 on the second page of the document is
2 NYC2_0001931 through 2115. And for the
3 record, it appears to be a report
4 entitled "Conceptual Design Report for
5 the Station 6 Demonstration Plant,
6 December 2004." And my question to you
7 initially, Mr. Cohen, is this a document
8 that was submitted to DEP reflecting
9 Malcolm Pirnie's recommendations with
10 respect to the design of the Station 6
11 demonstration plant?

12 A. With respect to the
13 conceptual design of the Station 6
14 plant.

15 Q. What is a conceptual
16 design?

17 A. It is a preliminary
18 document that lays out the approach and
19 perhaps, in this case, what were
20 considered the more important
21 components, but is not a complete
22 design.

23 Q. And when you say it is not
24 a complete design, what sort of things

00239

1 are lacking from it that would be
2 necessary for a complete design?
3 A. In this case things that
4 had not been developed beyond a very
5 preliminary stage might be the
6 electrical detail, the structural detail
7 for the building, the civil site work
8 that would be required at the location,
9 the HVAC systems wouldn't be built. But
10 because, as you saw, we concentrated on
11 treatment process from the -- coming out
12 of the pilot testing and through the
13 process selection, this report also
14 advanced a bit of the architecture. But
15 some of those other factors that would
16 still remain to be developed in a higher
17 percentage completion up to a complete
18 design were not yet developed fully at
19 this point.

20 Q. Is this particular document
21 a deliverable under the contract between
22 Malcolm Pirnie and DEP?

23 A. Yes, it was.

24 Q. That's why it was prepared?

00240

1 A. Yes, yes.

2 Q. To whom was this delivered?

3 A. Again, to Doug Greeley and
4 Bill Yulinsky as our primary contacts at
5 the DEP under this contract.

6 Q. If you can go to the page
7 that's marked NYC2_0001933 --

8 A. Okay.

9 Q. -- and to save transcript
10 space and my voice, I will probably
11 limit it to the last four numbers from
12 here on out.

13 A. That's fine.

14 Q. At the top of the page the
15 first full paragraph in the last
16 sentence it states: "Due to the
17 occurrence of groundwater flooding in
18 the area, the number of out-of-service
19 wells in the...vicinity" -- "in the
20 Station 6 vicinity, and its central
21 location, it was determined that the
22 first 'Demonstration Plant' of this
23 approach should be located at this
24 site."

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1 IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

2

3 IN RE:

4 Methyl Tertiary Butyl:MDL NO. 1358 (SAS)
Ether ("MTBE") :
5 Products Liability :
Litigation :
6

7 In Re:

8 City of New York

9

CONFIDENTIAL (Per 2004 MDL 1358 Order)

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January 16, 2009

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CONFIDENTIAL Videotaped
14 Deposition of MARK MAIMONE, Ph.D., P.E.,
30(b)(6) witness for the City of New
15 York, held in the law offices of
McDermott, Will & Emery, 340 Madison
16 Avenue, New York, New York, beginning at
approximately 10:00 a.m., before Ann V.
17 Kaufmann, a Registered Professional
Reporter, Certified Realtime Reporter,
18 Approved Reporter of the U.S. District
Court, and a Notary Public.

19

20

21

22

GOLKOW TECHNOLOGIES, INC.
23 877.370.3377 ph|917.591.5672 fax
deps@golkow.com

24

00089

1 Q. Within this decision

2 process, what is the City's role?

3 A. They participate in it, and

4 they are ultimately the decision-makers.

5 Q. Who at the City

6 participates in the decision process, as

7 you've called it?

8 A. At various times a very

9 large number of City employees. I

10 couldn't come up with all the names. I

11 can come up with some, if that's what

12 you are looking for.

13 Q. Sure.

14 A. Certainly William Meakin

15 Florence Mak, Esther Siskind. Kathryn

16 Garcia has been very active. Jim

17 Mueller has been very active. Mike

18 Borsykowsky has been active. There are

19 more, but I -- a lot of the managers at

20 times have participated.

21 Q. Who developed the Tier 1,

22 2, and 3 selection criteria?

23 A. The JV worked out a series

24 of criteria and then passed them by the

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1 IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

2

3 IN RE:

4 Methyl Tertiary Butyl:MDL NO. 1358(SAS)

Ether ("MTBE") :

5 Products Liability :

Litigation :

6

7 CONFIDENTIAL (Per 2004 MDL 1358 Order)

8 In Re: City of New York

9

April 22, 2009

10

11

CONFIDENTIAL Videotaped
12 Deposition of WILLIAM A.T. MEAKIN,
P.E., held in the law offices of
13 McDermott, Will & Emery, 340 Madison
Avenue, New York, New York, beginning at
14 approximately 10:13 a.m., before Ann V.
Kaufmann, a Registered Professional
15 Reporter, Certified Realtime Reporter,
Approved Reporter of the U.S. District
16 Court, and a Notary Public.

17

18

19

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21

22

GOLKOW TECHNOLOGIES, INC.
23 877.370.3377 ph|917.591.5672 fax
deps@golkow.com

24

00011

1 Q. And Mr. Meakin, what is
2 your current business address?

3 A. It is 59-17 Junction
4 Boulevard, Flushing, New York.

5 Q. And who is your current
6 employer?

7 A. New York City Department of
8 Environmental Protection.

9 Q. How long have you been an
10 employee of the City of New York?

11 A. Since July of 1987, so
12 that's coming up to 22 years. Coming up
13 to 22 years.

14 Q. And in your current
15 position, what is your title?

16 A. My current position title
17 is chief.

18 Q. You are chief of what
19 bureau or division?

20 A. My division is Capital
21 Planning and Prioritization.

22 Q. How long have you held that
23 position?

24 A. Since February of this

00109

1 information, putting an informed
2 decision on the projects needed to allow
3 us to take that tunnel. So I can't
4 predict what's going to happen in three
5 years from now, but I can see a whole
6 host of projects going forward. In
7 fact, there will be a whole host of
8 projects going forward.

9 Q. With respect to the
10 ultimate decision as to which projects
11 within the Dependability Program will
12 proceed forward and on what schedule,
13 who ultimately makes that decision?

14 A. The ultimate person in
15 charge of the City is the Mayor.
16 Obviously, my old job -- it's not my job
17 anymore -- was to present all the
18 information needed for them to make that
19 informed decision. It will be brought
20 to all the DCs, the deputy commissioners
21 of all the bureaus involved. There will
22 be other Deputy Commissioners involved.
23 BEPA, Kathryn Garcia will be involved.
24 They will be bringing it to the

00110

1 Commissioner at the time from three
2 years from now at the moment. Steve
3 Lawitts, the person who's running our
4 department. And I'm sure the Mayor's
5 office and OMB will be involved in those
6 decisions as well and then ultimately it
7 would go to the Mayor's office on the
8 recommendations to take forward.

9 Q. With respect to Ms. Garcia,
10 what is her position with the
11 department?

12 A. Right now?

13 Q. Yes.

14 A. She is an assistant
15 commissioner.

16 Q. And does Ms. Garcia have
17 responsibility for supervising the
18 activity of the Dependability Program?

19 A. I wouldn't say she
20 supervises the activity. That's my role
21 as the administrator of this contract.

22 She is in charge of special
23 projects under DEP, so I guess that
24 encompasses a lot of things, whatever

00111

1 she deems to be special projects.

2 Dependability is one of her interests,

3 yes.

4 Q. With respect to Ms. Garcia,

5 does she report to a particular Deputy

6 Mayor or Mayors relative to decision-

7 making on the Dependability Program?

8 MR. REO: If you know.

9 Q. If you know.

10 A. I only know she reports to

11 our Acting Commissioner.

12 Q. With respect to the

13 ultimate decision in two to three

14 years --

15 MR. REO: Regarding the

16 Dependability Program?

17 MR. STACK: Regarding the

18 Dependability Program by the Mayor.

19 MR. REO: As opposed to the

20 specific projects?

21 MR. STACK: Absolutely.

22 MR. REO: I'm sorry.

23 BY MR. STACK:

24 Q. With regard to the ultimate

00164

1 A. I probably mentioned all
2 the CDM people and I've actually added a
3 couple of other joint venture people.

4 Q. And with regard to Hazen
5 and Sawyer, you mentioned Mr. Peters.
6 Anyone else that you have spoken to at
7 Hazen and Sawyer specifically to get an
8 update to assist you in testifying here
9 today?

10 A. Rick is a member of Hazen
11 and Sawyer, I believe. Eileen Feldman,
12 I believe, is Hazen and Sawyer. As I
13 said, I know them as JV.

14 Q. Right.

15 A. I don't care which firm
16 they work for. So, yes, I believe
17 Ellen was in many progress meetings.
18 Elaine? Ellen? Elaine. Sorry.

19 Q. In preparation to give
20 testimony here today, did you speak to
21 any City employees to assist you in
22 getting information to testify?

23 A. Yes, I have.

24 Q. And who did you speak to?

00165

1 A. I have talked to Joe Murin,
2 sorry, Larry Delacruz, Kathryn Garcia.

3 Q. Anyone else you can think
4 of?

5 A. I generally talked to my
6 director, Jerry Cox, I have talked to
7 Jerry about Dependability; my deputy
8 commissioner, Jim Mueller; the acting --
9 assistant commissioner, Michael
10 Borsykowsky are all involved -- are all
11 people I report up to that I would have
12 been talking to about Dependability and
13 information would come out.

14 Q. Did you specifically speak
15 to any of these people and say I'm going
16 to have my deposition taken about the
17 Dependability Project. I need some
18 information about a certain aspect of
19 it. What do you know about this?

20 A. Yes. Joe Murin, Larry
21 Delacruz, Kathryn Garcia.

22 Q. And Mr. Murin, what
23 division or bureau is he with?

24 A. He is our budget person for

00166

1 the DEP.

2 Q. Did he provide you with the
3 document we've marked as Exhibit No. 8?

4 A. I have no -- I assume he
5 did. It would have come from his --

6 MR. REO: This document?

7 A. Sorry.

8 Q. Exhibit No. 8. I
9 apologize.

10 A. This document came from me.

11 Q. You produced this from your
12 own computer files?

13 A. This was produced by my new
14 staff to be submitted to me, yes, and I
15 may have moved the columns around and
16 such things.

17 Q. Mr. Delacruz, what did you
18 speak to him about?

19 A. He is also part of the
20 budget. He works for Joe Murin, and I
21 was talking to both of them to get an
22 understanding of the January plan, what
23 was done, the ten-year, the four-year
24 plans, who negotiates.

00167

1 Q. Kathy Garcia, what did you
2 speak to her about relative to your
3 testimony?

4 A. I wanted to make sure
5 that -- I know the position of our last
6 commissioner, Emily Lloyd, was that
7 Dependability is foremost important to
8 DEP and it carried, I think, a high
9 place in DEP to make sure it gets done.
10 I wanted to make sure, under the new
11 acting commissioner, Steve Lawitts, that
12 he also shared the same views of Emily
13 Lloyd on Dependability and did he know
14 about Dependability.

15 And she confirmed to me
16 that he also, yes, shares the same views
17 as Emily Lloyd and has actually talked
18 to many people within the Mayor's office
19 and OMB about this project.

20 Q. What did you speak to
21 Mr. Cox about relative to testimony here
22 today?

23 A. It was more of, when I was
24 assigned to my new position, I wanted to

00001

1 VOLUME II

2 IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

3

4 IN RE:

5 Methyl Tertiary Butyl:MDL NO. 1358 (SAS)

Ether ("MTBE") :

6 Products Liability :

Litigation :

7

8 CONFIDENTIAL (Per 2004 MDL 1358 Order)

9 In Re: City of New York

10

April 23, 2009

11

12

Continued CONFIDENTIAL

13 Videotaped Deposition of WILLIAM A.T.

MEAKIN, P.E., held in the law offices of

14 McDermott, Will & Emery, 340 Madison

Avenue, New York, New York, beginning at

15 approximately 9:44 a.m., before Ann V.

Kaufmann, a Registered Professional

16 Reporter, Certified Realtime Reporter,

Approved Reporter of the U.S. District

17 Court, and a Notary Public.

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00207

1 as proceeding forward with other
2 projects to replace water which may be
3 lost if the tunnel was taken out of
4 service?

5 A. I remember having
6 discussions with him, saying I didn't
7 understand this e-mail and that we -- to
8 develop a Dependability Program, that
9 all these options are still on the table
10 and they need to be developed further so
11 DEP, the City of New York, can make an
12 informed decision.

13 Q. And in making an informed
14 decision, did you have any discussions
15 with Kathryn Garcia concerning
16 recommendations to personnel within the
17 DEP in management positions recommending
18 which options to pursue within the
19 Dependability Program?

20 A. I have had many discussions
21 with Kathryn Garcia, where I have said
22 that I could argue either way depending
23 on advancing a project, but my role is
24 to gather the information to allow us to

00208

1 make an informed decision.

2 Q. And with regard to your
3 discussions with Ms. Garcia, did she
4 ever ask you specifically as to whether
5 or not you could endorse a
6 recommendation to any of the deputy
7 mayors or to the Commissioner to pursue
8 developing a parallel tunnel for the
9 Rondout-West Branch Tunnel system and to
10 not pursue any other Dependability
11 Program projects?

12 MR. REO: Objection.

13 A. I have told Kathryn, again,
14 I could argue for both ways and I have
15 said that we definitely need to get more
16 information on -- hence the contract we
17 are now letting to gather more
18 information on this. I would not --
19 this is not in a substitute of
20 Dependability projects that are ongoing.

21 Q. And with regard to the
22 ongoing nature of the Dependability
23 projects, those projects are being
24 pursued to bring them to a point at

00212

1 information to bring it into a point
2 where we could make an informed decision
3 on what will be the Dependability
4 Program.

5 Q. Did there come a point in
6 time in 2008 when Kathryn Garcia
7 consulted you to ask whether or not you
8 could support a recommendation to pursue
9 constructing a parallel tunnel for the
10 Rondout-West Branch Tunnel?

11 MR. REO: Objection.

12 A. I think the only way I can
13 answer that is once again saying, I
14 could support arguing for both ways and
15 I need to develop -- we need to develop
16 more information to make an informed
17 decision.

18 Q. With respect to Ms. Garcia,
19 did she specifically talk to you about
20 and solicit your input on a presentation
21 to a Mr. Skyler in the department
22 recommending that the department pursue
23 constructing a parallel tunnel to the
24 Rondout-West Branch Tunnel leakage

00213

1 areas?

2 A. All right. I was going to
3 look at the document. I know she had
4 discussions with Deputy Mayor Skyler on
5 this 3 CDA.

6 Q. And who is Deputy Mayor
7 Skyler?

8 A. I only know him as Deputy
9 Mayor Skyler -- I think you just
10 mentioned his name, first name.

11 Q. Yes. Does Deputy Mayor
12 Skyler have any responsibility over
13 supervising the activities of the New
14 York City DEP?

15 A. I do not know that as a
16 fact. I believe --

17 Q. That he may?

18 A. -- that he may be our first
19 deputy, whatever his title is.

20 Q. With respect to the
21 organization of the executive branch,
22 are there deputy mayors who have
23 explicit responsibility for certain
24 departments within the City government?

00218

1 suggest that the tunnel may be
2 experiencing an increase in the volume
3 of water leaking."

4 Was it the position of the
5 Dependability Project team that in July
6 of 2008 data indicated that the tunnel
7 was experiencing an increase in the
8 volume of water leaking?

9 A. The joint venture would not
10 be privy to this kind of information.
11 This tunnel investigation is run by
12 another consultant. They may have had
13 hearsay.

14 Q. My question, though, is in
15 terms of Ms. Garcia, was she informed by
16 individuals in the department that
17 events in Wawarsing suggested that the
18 tunnel was experiencing an increase in
19 the volume of water leaking?

20 A. There was a lot of press
21 releases during last year about flooding
22 in Warwarsing and I do not know who she
23 was talking to about those.

24 Q. As the person most

00234

1 my best recollection, from her.

2 MR. STACK: Now I would like
3 to ask the court reporter to mark
4 another document. This is a document
5 dated September 10, 2008. This
6 particular document is an e-mail, again
7 sent from Kathryn Garcia to William
8 Meakin and James Mueller. It is the
9 attached draft of the Commissioner's
10 briefing for the Commissioner, assumedly
11 by Mr. Mark Page. It is Bates labeled
12 NYC-DS-035874 through 035904.

13 I will ask the court
14 reporter to mark it as Exhibit No. 37
15 and I'll provide a copy of this memo
16 from Ms. Garcia to yourself dated
17 September 10, 2008. Provide that to you
18 and provide a copy as well to your
19 counsel, provide a copy to co-counsel of
20 what now has been marked as Exhibit 37.

21 (Above-described document
22 marked Meakin Exhibit 37.)

23 BY MR. STACK:

24 Q. Do you recall in September

00235

1 of 2008 discussing with Ms. Garcia a
2 presentation to the Commissioner
3 concerning the Dependability Project?

4 MR. REO: I think if you
5 would, Mr. Stack, just allow the witness
6 to review the document, please.

7 THE WITNESS: I have looked
8 at the PowerPoint presentation. Your
9 question was?

10 MR. STACK: The pending
11 question was --

12 (The court reporter read the
13 record as follows:

14 "QUESTION: Do you recall
15 in September of 2008 discussing with
16 Ms. Garcia a presentation to the
17 Commissioner concerning the
18 Dependability Project?")

19 THE WITNESS: This is
20 Kathryn Garcia presenting to Jim and
21 myself the presentation that the
22 commissioner gave Mark Page.

23 BY MR. STACK:

24 Q. Who is Mark Page?

00240

1 to be the recommendation.

2 Q. Since September of 2008 has
3 anyone in the Department of
4 Environmental Protection told you that
5 at the senior levels of management the
6 decision is made -- has been made to
7 construct the 3rd Catskill/Delaware
8 Aqueduct Tunnel to parallel the Rondout-
9 West Branch Tunnel and address the
10 tunnel leakage problem that way?

11 A. No one from senior staff
12 has told me that.

13 Q. Have you ever had any face-
14 to-face meetings with Commissioner Lloyd
15 when she was in office to discuss what
16 her preferred option was on the
17 Dependability Program?

18 A. I did not.

19 Q. Have you had any face-to-
20 face meetings with the current acting
21 commissioner relative to what his
22 current recommendation is as the
23 preferred option in pursuing the
24 Dependability Program?

00241

1 A. I have not talked to him
2 directly, but I did ask Kathryn Garcia
3 what his opinion was, as stated I
4 believe yesterday, and I was told that
5 he is behind the Dependability Program.
6 And as I mentioned that he has mentioned
7 it at many meetings with other agencies
8 and with the Mayor's office.

9 Q. Prior to appearing here to
10 testify as the person most knowledgeable
11 concerning the Dependability Program
12 pursued by the City of New York, have
13 you specifically had conversations with
14 the commissioner who is currently acting
15 as commissioner to determine whether or
16 not he endorses the recommendation of
17 Commissioner Lloyd to pursue, as the
18 preferred option, constructing a
19 parallel tunnel or 3rd Catskill/Delaware
20 Aqueduct Tunnel to address the issue of
21 leakage from the Rondout-West Branch
22 Tunnel?

23 MR. REO: Objection.

24 A. I have not personally

1 VOLUME II
2 IN THE UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK

4 IN RE:

5 Methyl Tertiary Butyl:MDL NO. 1358 (SAS)
6 Ether ("MTBE") :
7 Products Liability :
8 Litigation :

9 In Re:

10 City of New York
11 -----

12 CONFIDENTIAL (Per 2004 MDL 1358 Order)
13 -----

14 January 9, 2009
15 -----

16 Continued Videotaped
17 Deposition of RICHARD E. PETERS, P.E.,
18 held in the law offices of McDermott,
19 Will & Emery, 345 Madison Avenue, New
20 York, New York, beginning at
21 approximately 10:15 a.m., before Ann V.
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00450

1 whatever the final number would be, the
2 City's emphasis changed to let's make
3 sure that the projects that we want to
4 move forward are viable and we can move
5 forward. So it was a de-emphasis of
6 selecting an entire program and an
7 emphasis towards making sure projects
8 that had merit were progressing, but not
9 to forget about a program will follow.
10 And some of the work I'm trying to
11 express, there is ongoing work to help
12 to firm that up.

13 Q. Do you have an
14 understanding as to who the ultimate
15 decision-makers are as to what will
16 constitute a dependability program?

17 A. My understanding is that
18 would be at the commissioner level
19 within New York City DEP. Steve Lawitts
20 is the acting commissioner at the
21 moment. Kathryn Garcia I anticipate
22 will be part of that, as well as some of
23 the other names I mentioned, James
24 Mueller, Angela Licata. I believe they

00451

1 would be decision-makers. And certainly
2 it would be beyond New York City DEP.
3 If we're talking about investments of
4 very large amounts of money, there's
5 other City agencies that would, I'm
6 certain, be pulled into that discussion,
7 the Mayor's Office, the Office of
8 Management and Budget, et cetera.

9 Q. Have you seen any documents
10 which sort of outline the steps that
11 have to be undertaken to get to from
12 where the City is now to a decision by
13 the ultimate decision-makers?

14 A. There have been -- it's not
15 contained in a single document.

16 Q. In multiple documents?

17 A. It's something that I think
18 has been talked about and discussed with
19 DEP, but not contained within a
20 document.

21 Q. So these are verbal
22 discussions so far as you know?

23 A. Well, there are verbal
24 discussions that are ongoing. Some of

00296

1 UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

2

3 - - -

4 IN RE: : MDL No. 1358 (SAS)

:

5 Methyl Tertiary :

Butyl Ether :

6 ("MTBE") :

Products :

7 Liability :

Litigation :

8

9 CONFIDENTIAL (Per 2004 MDL 1358 Order)

- - -

10

October 11, 2005

11

- - -

12 Continued videotape deposition of

13 THOMAS G. TENGELSEN, held in the offices

14 of McDermott Will & Emery, 50 Rockefeller

15 Plaza, New York, New York 10020,

16 commencing at 10:02 a.m., on the above

17 date, before Linda L. Golkow, a

18 Federally-Approved Registered Diplomat

19 Reporter and Certified Shorthand

20 Reporter.

21 - - -

22

23

24

00376

1 A. I believe that was sent to
2 Doug Greeley.

3 Q. What position does he hold
4 with the department?

5 A. Deputy commissioner.

6 Q. When was it that you
7 conducted a survey to determine which
8 wells operated by the City had dry wells?

9 A. It was this year. I don't
10 remember the actual time.

11 Q. Other than the deputy
12 commissioner, was there anyone else who
13 received a copy of the report relative to
14 the survey that you conducted for dry
15 wells being present at well sites?

16 A. There could have been, but I
17 don't recall.

18 Q. When you say "this year,"
19 you're saying that the survey you
20 referred to to determine where dry wells
21 were located at well sites was conducted
22 in 2005?

23 A. That is correct.

24 Q. With regard to the location

00001

1 UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

2

3 - - -

4 IN RE: : MDL No. 1358 (SAS)

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Products Liability :

7 Litigation :

8 :

9 CONFIDENTIAL (Per 2004 MDL 1358 Order)

10 - - -

11 October 25, 2005

12

13 - - -

14 Videotape deposition of WILLIAM A.

15 YULINSKY, P.E., held in the offices of

16 McDermott Will & Emery LLP, 50

17 Rockefeller Plaza, New York, New York

18 10020, commencing at 10:20 a.m., on the

19 above date, before Linda L. Golkow, a

20 Federally-Approved Registered Diplomat

21 Reporter and Certified Shorthand

22 Reporter.

23 - - -

24 ESQUIRE DEPOSITION SERVICES

Four Penn Center

1600 John F. Kennedy Boulevard

Suite 1210

Philadelphia, Pennsylvania 19103

(215) 988-9191

00169

1 Q. With regard to the budget
2 process, in each of the years following,
3 I take it you would be required to
4 prepare an individual capital budget for
5 that fiscal year?

6 A. Yes.

7 Q. With respect to the projects
8 that you estimated, for example, for VOC
9 removal at station 48, did the City
10 actually budget monies, as best you
11 recall, for capital improvements in 1998
12 and 1999?

13 A. I can't recall.

14 Q. Can't recall.

15 When we started the
16 discussion of budgets, you had indicated
17 that there were ten-year horizons that
18 you looked at. Do you prepare an annual
19 budget for capital improvements for the
20 Jamaica water system, as well as
21 associated facilities?

22 A. Yes.

23 Q. And with regard to the
24 annual budget, do you maintain,

00170

1 electronically or otherwise, copies of
2 the budget proposals that you make to
3 management in the City of New York?

4 A. Yes.

5 Q. And for how many years do
6 you have budget proposals which contain
7 recommendations for VOC removal
8 facilities, including removal of MTBE?

9 A. Probably, from this year,
10 probably until now, with perhaps a year
11 or two when there was a lapse.

12 Q. And when you say "from this
13 year," you mean from 1997 to the present?

14 A. Yes.

15 Q. With respect to the budgets
16 that you would prepare, are those stored
17 electronically by yourself?

18 A. Yes.

19 Q. And they are stored on your
20 hard drive in your budget file?

21 A. In Lotus.

22 Q. In Lotus?

23 A. Yes. I've been having some
24 trouble with that.

00171

1 Q. Not Excel?

2 A. The initial ones were in
3 Lotus, and I have got a computer that I
4 can convert. Nobody else does.

5 Q. You've converted to Excel?

6 A. It's not converted yet. I
7 have stuff, and it's old. I probably
8 have some paper copies. No. I probably
9 just have the hard copies.

10 Q. Within the chain of command,
11 who do you submit your budget proposals
12 to in the department?

13 A. Presently?

14 Q. Presently.

15 A. Doug Greeley.

16 Q. And historically, when you
17 first came on board, was Mr. Greeley also
18 in a position where you submitted things
19 to him?

20 A. I think they got to him
21 eventually.

22 MR. STACK: And I'll try to
23 help you, if I can. I'll pull out
24 the City's organization chart, and

1 VOLUME II
2 IN THE UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK

4 IN RE:

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7 Products Liability :
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8 CONFIDENTIAL (Per 2004 MDL 1358 Order)

9 -----
10 January 30, 2006

11 -----
12 CONFIDENTIAL Continued
13 Videotaped Deposition of WILLIAM
14 YULINSKY, held in the law offices of
15 McDermott, Will & Emery, 50 Rockefeller
16 Plaza, New York, New York 10020,
17 beginning at approximately 10:08 a.m.,
18 before Ann V. Kaufmann, a Registered
19 Professional Reporter, Certified
20 Realtime Reporter, Approved Reporter of
21 the U.S. District Court, and a Notary
22 Public of the Commonwealth of
23 Pennsylvania.

18 -----
19
20
21
22 GOLKOW LITIGATION SERVICES
23 1600 John F. Kennedy Boulevard
24 Four Penn Center, Suite 1210
Philadelphia, Pennsylvania 19103
877.DEPS.USA 917.591.5672

00469

1 Q. Sorry for the size of the
2 print, Bill, but that's as good as it
3 gets, unfortunately.

4 A. That's what the print size
5 was.

6 Q. And if you copy it a few
7 times, it gets real fuzzy. I
8 apologize. I suffer through it, as do
9 the lawyers in this case from both
10 sides.

11 Have you had an opportunity
12 to review what was marked as Exhibit 41?

13 A. Yes, I have.

14 Q. Prior to your deposition,
15 had you ever seen that document before?

16 A. In some various states,
17 yeah.

18 Q. And with respect to this
19 particular document, do you know why
20 Mr. Lane was sending it directly to
21 Mr. Greeley?

22 A. Yes.

23 Q. And why was that?

24 A. It was most -- I'm sorry.

00470

1 I need to say this would be hearsay, so

2 I don't have the exact reason.

3 Q. And what do you understand

4 to be the reason?

5 A. The City was in the midst

6 of a drought at this point in time. We

7 needed additional -- we needed to

8 supplement the supply system. Deputy

9 Commissioner Greeley was aware of the

10 Brooklyn/Queens Aquifer Study and its

11 scope and wanted to see how fast we

12 could get supplemental water into the

13 system by using the groundwater system

14 more than we had been.

15 Q. Okay. And did you play a

16 role in categorizing the various wells

17 that were in the Jamaica Water Supply

18 system?

19 A. Yes.

20 Q. And did you assist Malcolm

21 Pirnie in identifying the wells in each

22 of the Categories A through --

23 A. F.

24 Q. -- F?

00483

1 MR. STACK: I'm going to ask
2 the court reporter to mark another
3 document as Exhibit 45, and Exhibit 45
4 is a Malcolm Pirnie document, MP00005355
5 through 3564, and it pertains to a
6 public information meeting which is in
7 2001, but, nonetheless, refers to
8 comments of and participation of
9 Commissioner Miele and Deputy
10 Commissioner Greeley.

11 BY MR. STACK:

12 Q. And I will refer this to
13 you. Let me note for the record that in
14 this document I will refer your
15 attention to the second page, which I
16 will place a flag on, as well as a third
17 page and the sixth page of the text.

18 I provide a copy of
19 Exhibit 45 to you, I provide a copy to
20 your counsel, and provide a copy to
21 co-counsel of what has now been marked
22 as Exhibit 45.

23 I will give you an
24 opportunity to look at that and I will

00484

1 ask you some questions concerning that.

2 (Above-described document

3 marked Yulinsky Exhibit 45.)

4 BY MR. STACK:

5 Q. Have you had an opportunity

6 to review what was marked as Exhibit 45?

7 A. I got a chance to briefly

8 look at it and see the areas you had

9 indicated.

10 Q. With regard to your

11 recollection, did you attend a meeting

12 on or about November 27, 2001, at York

13 College in Jamaica concerning the

14 Brooklyn/Queens Aquifer Feasibility

15 Study public information meeting?

16 A. Yes, I did.

17 Q. And was Commissioner Miele

18 present at that time?

19 A. Long enough.

20 Q. And he made remarks to the

21 group?

22 A. Yes, he did.

23 Q. And did Deputy Commissioner

24 Greeley also attend?

00485

1 A. Yes, he did.

2 Q. And did he make remarks to
3 the group?

4 A. Yes, he did.

5 Q. And with regard to
6 Ms. Neuhaus, did she also attend and
7 make a presentation?

8 A. She coordinated the
9 meeting, if you will.

10 Q. Did Mr. Cohen at that
11 meeting make a presentation regarding
12 the Brooklyn/Queens Aquifer Feasibility
13 Study?

14 A. I would say most likely. I
15 can't recall specifically.

16 Q. And with respect to you,
17 personally, did you have a role in
18 addressing the group?

19 A. No.

20 Q. Why do you say it that way?

21 A. I -- large groups put me
22 off.

23 Q. And with respect to this
24 large group, were some of these meetings

00486

1 hostile?

2 A. Yes.

3 MR. GREENE: Objection to

4 the characterization; but go ahead.

5 A. It was a -- you could

6 characterize it somewhat hostile.

7 Q. And I'm not referring to

8 vegetables being thrown or anything.

9 A. Correct.

10 Q. But the citizens were

11 attending. How many people attended

12 this meeting with the advance notice

13 that you gave?

14 A. I believe that there was

15 almost 200 people there.

16 Q. And with regard to

17 Commissioner Miele, did he make clear to

18 the residents that part of the objective

19 of the study was to address flooding and

20 groundwater flooding problems in the

21 area?

22 A. Yes.

23 Q. Did he also remark to the

24 people at this meeting in 2001 that the

00487

1 City was also attempting to evaluate
2 using the Jamaica Water Supply wells for
3 drought and shut down an upstate supply
4 system?

5 A. Yes.

6 Q. There is a statement at the
7 top of Page 2 which reads:
8 "Commissioner Miele briefly discussed
9 the Jamaica Water Supply Company (JWS),
10 which was taken over by NYCDEP. He
11 noted that, prior to its closing, the
12 Company was producing some of the
13 poorest quality water and charging
14 customers approximately 40% more than
15 residents elsewhere in the City.
16 Residents are now receiving a
17 substantial quantity of upstate water at
18 the same rate paid by all New Yorkers."

19 Do you recall him making
20 comments to that effect to the public
21 group?

22 A. Pretty much.

23 Q. And with regard to the
24 comments, it goes on to read saying:

00488

1 "Commissioner Miele characterized the
2 quality of area groundwater as being
3 high in manganese and iron. In
4 addition, there were other contaminants,
5 many of which are due to the WSC site.
6 Use of the aquifers to supply drinking
7 water will require removal of this" --
8 "these contaminants."

9 Did Commissioner Miele
10 assure the residents that wells to be
11 used from the former Jamaica Water
12 Supply Company would be treated prior to
13 distribution to the system?

14 MR. GREENE: Object to the
15 form; but go ahead.

16 A. I would -- the best
17 thing -- the most clear recollection I
18 can have is that essentially we would be
19 provided -- we would attempt to provide
20 the customers good quality drinking
21 water.

22 Q. There is a comment here,
23 though, and I will focus on it. And I
24 realize these are not your notes, right,

00489

1 Mr. Yulinsky?

2 A. These are the -- these are
3 the -- probaly, most likely, these are
4 Helen Neuhaus' minutes of the meeting.

5 Q. And with respect to Helen
6 Neuhaus, did she keep minutes of all the
7 public meetings that were set up for the
8 Brooklyn/Queens Aquifer Feasibility
9 Study?

10 A. Yes, she did.

11 Q. And with respect to this
12 particular quote that I read, and I will
13 hyperfocus here, there is a statement to
14 the effect: "Use of the aquifers to
15 supply drinking water will require
16 removal of these contaminants."

17 MR. GREENE: Where are you
18 looking?

19 MR. STACK: Second -- pardon
20 me -- third full paragraph, Page 2,
21 Bates label 5356.

22 BY MR. STACK:

23 Q. Do you recall Commissioner
24 Miele indicating to the residents that

00490

1 use of the aquifers beneath Queens will
2 require removal of contamination?

3 A. I would say that he
4 probably said that. He would have said
5 that.

6 Q. With respect to
7 Commissioner Greeley, were you present
8 when he made his comments to the group?

9 A. Yes.

10 Q. And with regard to
11 Commissioner Greeley, did he represent
12 to the group that the department,
13 meaning the New York City DEP,
14 understood that the Jamaica Water Supply
15 system required improvement and that it
16 was imperative to integrate the
17 reservoir and groundwater supply
18 systems?

19 A. Yes.

20 Q. And did he report to the
21 residents in that meeting that the
22 effort to integrate the Jamaica Water
23 Supply system into the reservoir system
24 began in 1997?

00491

1 A. Yes, he did.

2 Q. And did Commissioner

3 Greeley report to the residents that

4 during the period from 1997 up to the

5 time of this meeting in November of 2001

6 the Department had undertaken water

7 distribution main installation projects

8 to interconnect the Jamaica Water Supply

9 system to the City reservoir system and

10 integrate them into one?

11 A. Yes.

12 Q. And with regard to the

13 concluding remarks there at the bottom

14 of the page, it states in

15 Exhibit No. 45: "In concluding his

16 remarks, Deputy Commissioner Greeley

17 stressed that, if NYCDEP is not able to

18 demonstrate to the community that the

19 groundwater can be treated

20 satisfactorily, it will not be

21 introduced into the City's drinking

22 water supply."

23 Do you recall him making

24 that statement?

00492

1 A. Yes.

2 Q. And did he also say:

3 "Ultimately, the New York City DEP is
4 looking to provide drinking water from
5 Jamaica aquifers that equals, if not
6 exceeds in excellence, that of the
7 reservoir supply"?

8 A. Yes.

9 Q. Now, further on there are
10 comments attributed to Mr. Cohen, and
11 Mr. Cohen talked about the
12 Brooklyn/Queens Aquifer Study and
13 specifically Station 6; am I correct?

14 A. Yes.

15 Q. And did he advise the
16 residents during the course of the
17 public meeting, as is indicated on the
18 bottom of Page 3, it says: "Mr. Cohen
19 indicated the project team is aware of
20 other problem sites in the area,
21 including the nearby New York City
22 Transit Authority (TA) Bus Depot and
23 leaking gasoline tanks at gas
24 stations"?

EXHIBIT B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x
In Re: Methyl Tertiary Butyl Ether ("MTBE")
Products Liability Litigation
----- x

**PLAINTIFF CITY OF NEW
YORK'S RESPONSES AND
OBJECTIONS TO
DEFENDANTS' SECOND
SET OF
INTERROGATORIES TO
PLAINTIFF CITY OF NEW
YORK**

This document relates to the following case:

City of New York v. Amerada Hess Corp., et al., 04 Civ.
3417

MDL No. 1358
Master File C.A. No.
1:00-1898 (SAS)

Plaintiff City of New York ("the City"), by its attorney, Michael A. Cardozo, Corporation Counsel of the City of New York, hereby responds to Defendants' Second Set of Interrogatories ("Interrogatories"),¹ dated May 12, 2008, as follows:

GENERAL STATEMENT

1. By responding to any interrogatory, the City does not concede the materiality of the subject to which it refers. The City's responses are made expressly subject to, and without waiving or intending to waive, any questions or objections as to the competency, relevancy, materiality, privilege, or admissibility as evidence, or for any other purpose, of any of the documents or information produced, or of the subject matter thereof, in any proceeding including the trial of this action or any subsequent proceeding.

¹ Defendants' characterization of these interrogatories as the "second set" of Interrogatories served on the City of New York is inaccurate. Previous to this request Defendants have served the City with the following sets of interrogatories: (i) Defendants' First Set of Interrogatories on the Issue of Standing; (ii) Defendants' First Set of Interrogatories; (iii) Defendants First Set of Written Discovery to Plaintiff Regarding Well Contamination; (iv) Flint Hills Resources, LP's First Set of Interrogatories; (v) Defendants' First Set of Interrogatories Under CMO-19; (vi) and Defendants' First Set of Supplemental Interrogatories. This is at least the Defendants' seventh set of interrogatories. Additionally, since August 1, 2008, Defendants have served seven additional sets of interrogatories on the City.

2003, Malcolm Pirnie performed a preliminary assessment of possibly using groundwater pumped from Stations 3 and 24 for beneficial non-potable uses (irrigation) at JFK Airport. The City is presently preparing documents related to this issue for production and will make them available to Defendants shortly.

Persons most knowledgeable of this issue are Don Cohen, Malcolm Pirnie; Marnie Bell, Malcolm Pirnie; Nabeel Miscalani, Malcolm Pirnie; Mark Lenz, Malcolm Pirnie; and Julie Kim, Malcolm Pirnie.

INTERROGATORY 22

State whether the City has prepared, or has selected or contracted with any third party for the preparation of, a Draft Environmental Impact Statement ("DEIS") concerning possible uses of the Brooklyn-Queens Aquifer. If a DEIS has been prepared, is in the process of being prepared, or if the City is planning to prepare one in the future, identify all documents concerning the DEIS and each Person with knowledge of its preparation or its planned preparation. If a DEIS has not been prepared, is not in the process of being prepared, or if the City is not planning to prepare or have a consultant prepare a DEIS, state the bases of the decision not to proceed with its preparation and when such decision was made, and identify all documents concerning such decision as well as each Person involved in such decision.

RESPONSE TO INTERROGATORY NO. 22

The City objects to this request as overbroad, vague and ambiguous, burdensome, and not likely to lead to the production of relevant information. The City further objects to this request as it call for the City to speculate on "whether the City is planning to prepare one in the future." The decision to prepare a DEIS is a legal determination governed by the standards set forth in the State Environmental Quality Review Act ("SEQRA"), and the City Environmental Quality Review ("CEQR") regulations.

Without waiving any objection, the City answers as follows:

The original contract with Malcolm Pirnie for the BQA Study contained an allotment for the preparation of a DEIS. Malcolm Pirnie was never authorized under the contract to prepare the DEIS and, through a contract change order issued by DEP in or around 2008, preparation of a DEIS was removed from the scope of the contract. The City is presently preparing additional documents response to this request which will be made available for production shortly.

Currently, DEP has not prepared, or has not contracted with any third-party for the preparation of a DEIS concerning the possible uses of the Brooklyn-Queens Aquifer. The City continues to pursue and plan for projects regarding the possible uses of the Brooklyn Queens Aquifer, including the Station 6 Project and as part of the Dependability Program. The City has not, at this juncture, formally commenced the environmental review process as set forth in SEQRA and CEQR. However while the City has not commenced the formal environmental review process for these projects, the City has never made any decision not to proceed with the preparation of a DEIS in the future and anticipates commencing environmental review regarding these projects, if required, before they are implemented.

The City objects to the Defendants' request for persons most knowledgeable as described in Interrogatory No. 22 because the request presupposes that persons have knowledge of certain legal decisions that have not, at this juncture, been formally made. Without waiving any objection, the City states that any environmental review for these planned projects pursuant to SEQRA or CEQR would be primarily overseen by staff within DEP's Bureau or Environmental Planning and Analysis ("BEPA")

EXHIBIT C

962UMTBEC

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

IN RE: METHYL TERTIARY BUTYL 00 MDL 1358
ETHER ("MTBE") PRODUCTS Master File C.A.
LIABILITY LITIGATION No. 1:00-1898 (SAS)

-----x

June 2, 2009
5:40 p.m.

Before:

HON. SHIRA A. SCHEINDLIN

District Judge

APPEARANCES

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WILLIAM STACK

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1 It may not be this Station 6 spending, and that is what may end
2 up with a directed verdict. We might as well go right to the
3 trial. As long as we all agree that's what we would try, and
4 we will try it first and now go back to the threshold issue.

5 MR. SACRIPANTI: Can you state it again for us, your
6 Honor?

7 THE COURT: Sure. Although it has been said a number
8 of times: Do you find by a preponderance of the credible
9 evidence that the City has proved that there is a reasonable
10 probability that the Station 6 water supply source will
11 actually be available to be online if needed within X years?

12 MR. SACRIPANTI: Shouldn't the issue be used?

13 THE COURT: No. We have been down that road. If
14 there is never a drought or never an outage, you will still
15 have to have a backup system ready.

16 MR. SACRIPANTI: I think that's where we take issue --

17 THE COURT: That's fine, but you can try that.

18 MR. SACRIPANTI: In other words, I get to try that
19 issue?

20 THE COURT: Sure. I thought that that was inherent in
21 that question. It is not inherent in that question?

22 If you convince the jury that the answer is no because
23 they will never do that because they have many other ways to
24 handle a drought or outage that are much more advanced or much
25 more available, then you will win the point, I think.

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1 All that we need to complete tonight, in a way, and we
2 will have done a good evening's work is plan phase 1 carefully.
3 Who are the witnesses? What is the question? What does a jury
4 need to know?

5 And I know Mr. Sher and I think that we have real
6 disagreement, that we talk about properties of MTBE, and I
7 don't think so. I don't think that that is inherent in this
8 question. It is just more, I think, of what the defense has
9 said: Does the City have evidence, real evidence that could
10 convince a trier of fact that this is their real backup plan?

11 MR. SHER: Your Honor, two points, if I may. The
12 first one is on what the City would do in the event of a
13 drought and what Ms. Amron said previously. If you would like
14 a declaration from a witness to that effect, we could provide
15 it.

16 THE COURT: For tonight's purposes I accept that,
17 which is why I have a case that could be tried because I have
18 jurisdiction, in other words.

19 MR. SHER: In addition, there is really no question
20 that there is already MTBE in these wells.

21 THE COURT: That doesn't interest me much because, if
22 there is MTBE in a well, for example, that you will say we know
23 that we would never use, I would say, who cares. Let's just
24 say that is a hypothetical. You say there is this old well, it
25 is boarded up. It is shuttered. I will never use it. Do you

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1 have a case?

2 It is a hypothetical. Don't get too excited.

3 You said, I am never ever going to use it, but there
4 is MTBE in it. Do you have a case?

5 MR. SHER: I think there is an academic, perhaps,
6 question about the nature of the property interests if the well
7 could be sold to some third party if there has been a
8 diminution in value of the City's property interest. The
9 presence of the contamination as, for example, a trespass
10 requires only nominal damages.

11 THE COURT: So you think that even that hypothetical
12 which is very clear on the record is not this case, there is an
13 old boarded up thing you concede that you never want to use,
14 you think that you still have a case?

15 MR. SHER: I think if the City has abandoned a well, I
16 think it is a hard case to make.

17 THE COURT: But technically, at least, if you are a
18 professor you will say it is a case?

19 MR. SHER: Right. And in addition, in our
20 circumstances, the issue might be, do we have another right to
21 drill another well there to make use of the water that is
22 contaminated.

23 I think that you have to assume for purposes of
24 finding that there is no issue at all that the water will ever
25 be used, not that the well has been abandoned. And even then I

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1 can probably make an argument. I concede the practical point,
2 why would we spend the Court's time, the jury's time and our
3 time over a well that we never intend to use.

4 THE COURT: I have to tell you, I think that we moved
5 past the jurisdictional question.

6 MR. SACRIPANTI: I am addressing the --

7 THE COURT: I just think that was floated, but
8 abandoned.

9 MR. SACRIPANTI: I understand that. I guess what I am
10 addressing is the academic point.

11 THE COURT: Why bother? We need to talk about stage
12 1.

13 MR. SACRIPANTI: We did discovery on whether they were
14 damaged and they said no, we are not damaged for these wells,
15 OK.

16 THE COURT: Not damaged?

17 MR. SACRIPANTI: There are no past damages for a
18 number of these wells. The only wells that they are claiming
19 past damages for is the Station 6 wells. So when he says we
20 have this interest --

21 THE COURT: I thought it can't be past damages. I
22 don't understand what is past?

23 MR. SACRIPANTI: Again, we don't think it is past
24 damages, but where they have been out-of-pocket and where they
25 are alleging it is caused by MTBE is this \$900,000.

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1 The point that I was responding to, your Honor's
2 hypothetical where Mr. Sher said, theoretically, if we were
3 going to sell it, the point is that we have asked questions
4 along those lines and the City has said they don't have
5 damages, and the only damages they have pointed to, current
6 damage, is for Station 6. That was my only --

7 THE COURT: That is only because they have already
8 spent money to begin the treatment.

9 MR. SACRIPANTI: Precisely.

10 THE COURT: But they are still saying the others are
11 damaged. We have not yet incurred the cost of fixing the
12 damages, and that's where nominal damages come in. If the MTBE
13 isn't near the wells you pick, the defense focus wells, they
14 are damaged but they are only nominal damages because they have
15 yet to spend some money to fix the problem, but they could
16 spend it anytime.

17 MR. SACRIPANTI: I would say this. With a
18 usufructuary right, they have to show that they are going to
19 use the wells --

20 THE COURT: We have been down that road. I understand
21 that they have to show they are going to use it. We have been
22 down that road, that's why they offered the declaration to
23 support what Ms. Amron said.

24 One of the ones that would be brought on most quickly
25 are actually the ones that would be turned to first, and they

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1 too would need some money spent even if it is only for two or
2 three weeks' treatment. The big money is Station 6 where it is
3 a \$200 million project.

4 So I do think that with all the time we spent, the
5 first issue, though, that should be tried to the jury is
6 whether the plaintiff can prove by a preponderance of the
7 evidence a reasonable probability that this will be done, that
8 money will be spent to bring this thing around as a backup
9 system.

10 MR. SACRIPANTI: Station 6?

11 THE COURT: Yes. You agreed to that, that it would be
12 just Station 6 which is really the big money. It is the not
13 the whole case, but it is the first issue that should be tried.

14 So we are back to where we were about an hour ago
15 which is what is the X.

16 MR. SHER: Also, the scope of the proof.

17 THE COURT: Let's do one at a time. I still think we
18 need -- you think that we need a time frame. You thought that
19 we needed none. I think that it is so speculative that any
20 verdict would not stand, so we need some time frame.

21 Why is 10 not good enough?

22 MR. SHER: If the question is do we need the backup
23 generator, as it were, rather than does it need to be actually
24 turned on --

25 THE COURT: Not turned on, but ready to be turned on
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1 as needed in the emergency, ready.

2 MR. SHER: I think 20 years would do it.

3 MR. SACRIPANTI: We would object. 20 years, why are
4 we here?

5 THE COURT: Because you have to start spending money
6 to have something ready to go online in 20 years.

7 I am the last person in this room to know how many
8 years it would take to be ready. I don't know this, and I
9 didn't go to the depositions. I don't know the answer.

10 MR. SACRIPANTI: But we have their own evidence.

11 THE COURT: I don't know what it is, Mr. Sacripanti.

12 MR. SACRIPANTI: I think Mr. Stack -- and forgive me,
13 I don't think that the Court should remember everything
14 Mr. Stack said -- what Mr. Stack said is that their own expert
15 said it would be planned in a certain period of time, there
16 were three ifs -- if they went forward for planning, if they
17 went to design, and then if they constructed it, it would be
18 online by X date.

19 THE COURT: What was the X date?

20 MR. STACK: It depends on how you want to slice and
21 dice it. The bottom line is, there is time built into that
22 schedule to make the decision. But if you talk about when you
23 make the decision to the point where you actually are going to
24 bring it online, that is four to six years.

25 THE COURT: Once you have made the decision, you

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1 believe the evidence shows it can be accomplished in four to
2 six years?

3 MR. STACK: That's what Mr. Meekin testified.

4 MR. SHER: I think it is actually a little longer,
5 your Honor.

6 THE COURT: What do you think it is, the decision?

7 MS. AMRON: Once the decision and the money is there?

8 THE COURT: Let's assume that the decision is made and
9 the money is there. Assume both of those, how long would the
10 work take?

11 MS. AMRON: There is the City's contracting process,
12 then the design, then the contracting process, then the
13 construction and then the start-up period. And all of that
14 together -- and this is the rough estimate based on what I
15 remember from the testimony -- is about seven to eight years
16 once the money is there if everything goes smoothly, if you
17 don't have to disqualify a contractor --

18 THE COURT: Then 10 would be safe.

19 MS. AMRON: When you are planning something that you
20 think will take seven to eight if everything goes smoothly, 10
21 from a trial before you had the money on hand, actually, that
22 has no buffer built into it because it doesn't account for the
23 trial time, but it also doesn't account for the problems of
24 disqualifying a contractor or having something take longer than
25 expected.

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1 THE COURT: It is an arbitrary number, but it has to
2 be fair to everybody. I am just going to say 15 and be done
3 with it. And that's a question that I would ask the jury, and
4 the witnesses would have to be prepared to prove it. That's
5 the first phase.

6 Now I think that we do need to turn to the question
7 that Mr. Sher has begun to ask, what evidence would I allow in
8 this first phase? What has to be in this first phase?